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No. 7

IN THE

Supreme Court of the United States

October Term, 1961

HENRY HONEYWOOD, FREDONIA HONEYWOOD, JOHN E. PERRY and HELEN PERRY, individually, jointly, in behalf of themselves and others similarly situated,

Appellants,

v.

NELSON A. ROCKEFELLER, Governor of the State of New York; CAROLINE K. SIMON, Secretary of State for the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; DENIS J. MAHON, JAMES M. POWER, JOHN R. CREWS and THOMAS MALLEE, Commissioners of the Board of Elections of the City of New York; and SEYMOUR HALPERN, Member of Congress, Representing the Fourth Congressional District of New York,

Appellees.

On Appeal From the United States District Court
For the Eastern District of New York

MOTION TO ADVANCE CASE ON THE CALENDAR AND AFFIDAVIT IN SUPPORT THEREOF

Moses M. Falk,
225 Broadway,
New York 7, New York,
Attorney for Appellants.

Lodge Appeal Press, Inc., 41 Vesey Street, New York, N. Y. WOrth 2-0689

Supreme Court of the United States

OCTOBER TERM, 1961

HENRY HONEYWOOD, FREEDONIA HONEYWOOD, JOHN E. PERRY and HELEN PERRY, individually, jointly, in behalf of themselves and others similarly situated,

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Appellees.

MOTION TO ADVANCE CASE ON THE CALENDAR

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Moses M. Falk, Esq., duly sworn to the 11th day of June, 1962; the order of the United States District Court for the Eastern District of New York dated the 22nd day of May, 1962; the record of hearing dated the 10th day of May, 1962, on appellants' motion for a preliminary injunction; the jurisdictional statement filed herewith; and upon all of the papers and proceedings heretofore had

herein, the undersigned will move this Court at a Special Term, thereof in the Courthouse located in the City of Washington, District of Columbia, on the 14th day of June, 1962, at 11:00 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order advancing the above case on the calendar of this Court, and setting the same down for an immediate determination, and further, if said motion be granted, for an order reversing the order of the United States District Court for the Eastern District of New York, dated the 22nd day of May, 1962, and which order denied the motion for a preliminary injunction, and granting unto said appellants the relief sought in said motion, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
June 11th, 1962

Yours, etc.,

MOSES M. FALK
Attorney for Appellants
Office & P. O. Address
225 Broadway
New York 7, New York

To:

CLERK OF THE COURT

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York
Attorney for Nelson A. Rockefeller,
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80 Centre Street
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LEO A. LARKIN,
Corporation Counsel
Attorney for Denis A. Mahon, James M. Power, John R. Crews and Thomas Mallee, Commissioners of the Board of Elections of the City of New York
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IRVING D. GOLDSTEIN, Esq.
Attorney for Seymour Halpern
Office & P. O. Address
30 Vesey Street
New York 7, New York

ATTORNEYS FOR APPELLEES

Affidavit of Moses M. Falk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

HENRY HONEYWOOD, FELICONIA HONEYWOOD, JOHN E. PERRY and HELEN PERRY, individually, jointly, in behalf of themselves and others similarly situated,

Appellants,

v.

NELSON A. ROCKEFELLER, Governor of the State of New York; CAROLINE K. SIMON, Secretary of State for the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; DENIS J. MAHON, JAMES M. POWER, JOHN R. CREWS and THOMAS MALLEE, Commissioners of the Board of Elections of the City of New York; and SEYMOUR HALPERN, Member of Congress, Representing the Fourth Congressional District of New York,

Appellees.

State of New York }
City of New York } ss.:
County of New York }

MOSES M. FALK, being duly sworn, deposes and says:

That he is the attorney for the above named appellants, who are the plaintiffs in an action brought for a declaratory judgment, declaring Chapter 980 of the 1961 Laws

of the State of New York, unconstitutional, and for a permanent injunction restraining the said defendants from enforcing the said law as passed.

This action is a class action brought on behalf of the named appellants and all other persons, citizens, taxpayers and voters, similarly situated.

In the course of the proceedings, a motion was made by said appellants for an order granting a preliminary injunction restraining the said defendants, their successors and/or successors in office from the enforcement and execution of Chapter 980 of the 1961 Laws of the State of New York, on the ground that said Act violated the Fourteenth and Fifteenth Amendments to the Constitution of the United States. That the violation was a continuous one, with irreparable injury resulting therefrom. This motion was denied after a hearing, in the course of which appellants produced witnesses whose testimony was *uncontradicted* and which testimony fully confirms the allegations of the complaint.

The Learned Court, although denying the motion for a preliminary injunction, indicated its readiness to hear the trial itself at a subsequent date, affirming clearly that a prima facie case had been made out.

This Learned Court is being respectfully prayed to advance said cause on the calendar and if said motion to advance is granted, to review this appeal from the order of said three-judge statutory court and to reverse the order of the said court, which denied appellants' motion for a preliminary injunction. This motion is made to expedite the said appeal and to have the same heard during the October 1961 Term for the following reasons:

a. That Chapter 980 of the 1961 Laws of the State of New York which appellants claim to be unconstitutional, have fixed new congressional lines of forty-one congressional districts in the State of New York and which new districts will come into being for the November 1962 elections. The boundaries of these new congressional districts are being set forth in maps and descriptions of the said areas in order to acquaint the congressional candidates with the potential areas in which they are to campaign. Literature will be prepared by the said candidates, organizational activity will commence within said areas and a great deal of expense will be incurred by all concerned. Within the next two weeks said congressional candidates will be required to obtain the necessary signatures within the areas defined as congressional districts by Chapter 980 of the 1961 Laws of the State of New York, in order to appear on the ballot for the respective primaries. In addition, the candidates themselves, although it is not mandatory, are generally preferred to be selected among the residents of the district in which they plan to run. It is vital that at the earliest possible moment a determination be made as to whether or not the law concerned is constitutional or not. To permit these preparations on the basis of the lines as drawn pursuant to an Act which, prima facie, is unconstitutional, would cause irreparable injury. An order is urgently required from this Court indicating that a case of unconstitutionality has been made out by these plaintiffs so that all persons may be alerted to the fact that said new lines as drawn, may not be used in November of 1962. There is no adequate remedy at law other than an order of this Court as prayed for. It is anticipated

that the trial of the above action will occur as soon as interrogatories are answered, and should be held in the early summer of 1962.

b. Upon information and belief this Learned Court will recess for the summer period within the next few days. It is therefore urgent that an order be issued setting the within motion down for an immediate hearing and require that all parties to these proceedings waive their rights for filing papers within the stated periods, as provided for pursuant to the rules of this Court.

It is respectfully prayed that this motion, to advance this case on the trial calendar be granted, that all parties in view of the nature of these proceedings waive their rights to all possible delays and to proceed forthwith with a determination of the appeal now before this Court.

WHEREFORE, it is respectfully prayed that this motion to advance the above cause be granted in all respects.

MOSES M. FALK

Sworn to before me this
11th day of June, 1962.

MARIE C. MISGAICH
Notary Public
State of New York
No. 24-7964925
Qualified in Kings County
Commission Expires March 30, 1964

(Seal)